

**Gallatin County Interim Zoning Task Force
Minutes for June 10, 2009**

Date: June 11, 2009

Time: 6:30AM

- Place: Belgrade City Hall, 91 E. Central

Task Force Members Present: Don Seifert, Shane Skinner, Dick Huttinga; Rich Morse(via conference call); Ron Pike; Sandy Lee; Jackie Flikkema

Task Force Members Absent: Drew Jenkins; Alvin Vander Vos

County Staff/Personnel Present: Jason Karp, Heidi Jensen, Tom Rogers

County Commissioners Present: None

Public Present: Jerry Rice, Marty Lambert

Meeting commenced at 6:37AM

No public comment.

Don started the meeting by giving Rich a brief overview of what we would be talking about over the phone.

Marty started out by saying that he doesn't think the placeholder is a good idea as explained by Heidi [this was done over the phone when the meeting time and agenda was discussed with Marty]. It would be a volunteer situation and how many would be okay with putting something like that on their land? The answer is probably not many. Without specific statutory authority it wouldn't work. Don said the other questions the TF had were zoning related. Presently the TF is talking about un-zoned portions of the county, and single use zoning. Marty referred to HB 486. The Commission was supportive of the concept of the bill and ability to adopt it with a strict single use zoning. The bill did pass and would allow the Commission in a 201 fashion to implement zoning. The Commission's issue was on density zoning. Our interpretation of the bill would be specifically for a single use. Don asked about the protest period and if a single area was zoned would it make the area susceptible to adding additional restrictions without having another protest period. He also asked if there was a way to write the zoning regulation specifically for gravel pits and anything else would require its own protest period. Don is worried this could be the camel's nose under the tent flap. Marty thought it was a very good idea to look at this. Like any regulation it is subject to amendment at any time. He said we could have some sort of language that would restrict the particular zoning to that topic. That is sort of against the grain of regulation, they are subject to change. He has a couple of examples. At the state level, there was a statute that limited the state general fund to a percentage of growth. A particular version the legislature talked about would

raise taxes in excess. The attorney general's opinion was sought, and it was determined the previous legislature could not bind future legislatures. He thought this was pretty common and was the way partisan politics was played. From a legal standpoint when a new legislature is sworn in they make the new decisions. At a County level Resolution 1990-36 allowed the planning board to create a master plan but not amend anything. In 2000 the County Commission was different and the plan needed to be changed so after a decade the issue was looked at again, with a completely different elected Commission. With time change and elected officials being different a regulation that couldn't change would not work. Don said that he doesn't think that we would want to preclude the Commission from adding something else, we just would like a protest period to be added. Marty thought it was chiefly a political issue. He doesn't think we could bind the Commission. Whether we would trust them to stick with a single issue would be a matter of our own judgment. Next year is an election year and in 2011 we could have a new person, who may take a different view as to the gravel issue. We would need to live with the current person in office. The only way to do it would be to have it in the beginning but again we are running into the binding issue. The motivations for doing it and the intent were clear, a dozen years down the road it gets awkward.

Don asked Tom if he had a question. Tom said the TF goal was to allow the use not prohibit, if you are going to use the regulations here is what you can do and these are the mitigations required. We are allowing a use no matter what happens in the future, but there are people that will continue to bump up against the issue. Marty thinks it is pretty clear that all three Commissioners, no matter how they have looked at the various issues that gravel pits are important, it needs to happen with some reasonable restrictions and in no way shape or form are going to prohibit it. He thinks they have all followed through and done that. We are to 2011 and we may have someone else on the Board. They would have to change the regulation that would hopefully have worked for a number of years there would be considerable concerns in the meeting room. It is all politics. If there were two that were determined enough to change it, that's what would happen. From a broad standpoint in terms of policy the later Commissions are going to be able to change the regulation. Rich asked if he understood correctly we can single issue zone it is just up to the Commission. Marty said yes that is correct, and it doesn't take us too much further than where we were three years ago when they were looking at heights of buildings, etc. These are policy decisions they are making. It is up to the Commission to set the course for the County.

Rich asked if he could talk to Marty about the placeholder issue. Don said yes. Rich said the idea would be to allow a landowner or gravel operator to stake a claim on land that would have significant gravel resource so that future development would be aware that this parcel had been grandfathered. Are you saying this would not work? Marty said he doesn't think there is a legal place to stand on the issue. At this point in Montana law we do not have a way to do that. We need to recognize this could go pretty far into strip clubs, or any potential use of land use that people would use. Rich asked what it would take to allow that type of authority. Marty said it would be legislative. HB 486 was effective immediately so that is what we could use. However, we all know that it is the word "zoning" so we could conjure up a lot of emotions. The Commission would be

designating uses. He thought the Commission also understood we are trying to eliminate a lot of the problems we have had in the past. Rich had a follow-up question, if zoning is the only way to do this, can it be done in the single use zoning? Marty said yes. He doesn't think that anybody is going to be able to say that this regulation is not going to ever touch on any other type of use on property. This TF has spent a lot of time on the issue and now is a good time to flush out a regulation. However, we get back to a political issue and enforcing the rules comes back to zoning. Will the Commission approve zoning? Two of the Commissioners will have to approve it. No one will be able to say that now that we have zoning the regulation will never change. Marty talked about the strip club industry and somebody goes into the Commission Office after this regulation has been passed and just heard that a strip club right down the street from a nice neighborhood on a busy thoroughfare. If you have two Commissioners that agree and amend the regulation to include strip clubs. Jackie asked if any other Counties have done single use zoning and if it was successful? Marty said it hadn't been legal before. However, Lake County has been the only County that has every attempted it. Jackie said we don't know what else could be tacked on to this one purpose. Marty said that is a distinct possibility. Jackie said it is an easy way for people to get through the process without having the protest period. Marty said he is in his thirteenth year as County Attorney and he knows how it would be viewed if the Commissioners started tacking things on. Politically he doesn't think it would go well.

Don said let's back way up, and discuss the reasoning behind any regulation having to be done through a zoning regulation. Marty said through the growth policy through subdivision you can have considerable authority. Marty said there are a lot of parcels that without any subdivision review you can mine gravel at anytime. Don talked about conditions outside of the pit since DEQ controls everything in the pit. Marty said the most defensible way to take care of things is zoning. We are immediately getting into gray areas that are not very legally defensible, since we don't like to talk about zoning. Don alluded to his primary school example. Don understands Marty can't speak for the Commission; however he said they have asked for a spot at the table for the gravel issue and zoning appears the only path for us to go down. Our job would be to give them the best path to go down. Marty said he can't answer that because he doesn't know what path they want to go down. The safest and most defensible path to go down would be zoning. Lawyers feel good when there is a lot of ink on paper and zoning is the most defensible way to go. The three Commissioners view the opinions we will give them. If they want to affect it they need to come. Rich asked about Pomnichowki's legislation that allowed zoning and how Greg eluded to issues with it. Marty didn't know why Greg was concerned. Jason said he thought it was a concern over the statue it was amending not the bill itself.

Don asked Tom if he had any other questions. Tom said he did but they were technical about recommendation questions. It wasn't questions about what we needed to work on for further TF meetings. I asked to be included in all those discussions. He can help us do these things but would ask for a short list. Rich had one more question as to the definition of industrial. What we are curious about is if gravel mining can fit into the definition of light industrial. Tom asked if he was referring to the existing definitions

included within our growth policy. Marty said we are going to substantive questions that are in writing and we could kick that around for quite some time, and it depends what it says versus medium, high and so forth. It is something we have to look at in detail. That is easy to change. If we are concerned about zoning and what kind of changes further Commissioners may make. A temporary pit in our classification may be considered light industrial while "Belgrade style" pits may be considered heavy industrial. Don asked for any other questions for Marty. Ron asked that single use zoning from HB 486 was in place. Marty said it was not in place but certainly allowed. Now the Commission has the option. Jackie said that with this type of zoning we are opening ourselves to a lot of morphing. She would really like to see changes happen with some kind of protest period. She doesn't want to see it jumping around every two years. Jason said if we went with a zoning regulation we would have to include an amendment section within. They couldn't just do it on a whim. Marty said at the end of the day it can be changed as well as the section for amendments. There are minimum amendment statutes in state law. Don said that somewhere along the line we will come out with a fairly completed idea and sit down with the Commission and say here is where we are going. Don said one of the other issues we are trying to get around is when we have multiple operations in an area and we begin to address accumulative effects. Don knows if we call it a gravel district that has certain ramifications. What if we call it an area of significant resources? He also talked about road improvements and the problems with subdivisions. For example air quality, fugitive dust, where the first operator doesn't trigger, the second doesn't but the third pit does. What is a good way to address that? Jackie asked without a huge lawsuit? Marty said it was a very complex area. Air quality is a DEQ matter. Don referred to Rich. Marty said we are getting to substantive regulation. Jackie asked how it worked with state law? How does it work for the County when someone would have to enforce it without qualified people? Marty said it was a good question. We would either need staff or the ability to contract. The expertise needs to be available quickly.

Marty had to leave 7:35 and he would be happy to help us further on. He said the Commission is very interested to know what the recommendations we make will be. Marty was thanked by the TF.

Group discussion on what Marty talked about. Planners and TF talked about what zoning means, single use, spot zoning, and HB 486 and what they would entail. The group also talked about the CUP process.

Minutes area abbreviated from here as I needed and wanted to comment extensively. The TF continued to discuss the advice Marty had given. The remainder of the meeting was consumed by group discussion.

Next meeting: June 24, 2009 either at City Hall or in the Library.

Agenda to follow.

